



**CITY OF LODI
COUNCIL COMMUNICATION**

TM

AGENDA TITLE: Authorize City Manager to Enter Voluntary Cleanup Agreement with Department of Toxic Substances Control for Soil Removal on Lodi Energy Center Site

MEETING DATE: August 11, 2009

PREPARED BY: City Attorney's Office

RECOMMENDED ACTION: Authorize City Manager to Enter Voluntary Cleanup Agreement with Department of Toxic Substances Control for Soil Removal on Lodi Energy Center Site.

BACKGROUND INFORMATION: The LEC site was historically used to store sewer sludge, primarily during periods that the sludge ponds needed maintenance. It is possible that this storage caused several contaminants that have been found on site including metals, pesticides and combustion byproducts.

NCPA and City staff have tentatively agreed to the following remediation program.

- a) City to enter Voluntary Cleanup Agreement with Department of Toxic Substances Control (DTSC) and perform cleanup. City to pay consultant and DTSC costs currently estimated at \$100,000 to \$300,000.
- b) LEC to excavate and load soil at its expense.
- c) City to pay trucking and disposal costs currently estimated at \$320,000 to \$1.3 million.
- d) LEC to front all cleanup costs as a credit against LEC's payment obligations to City.

Terms of Voluntary Cleanup Agreement:

- 1) City contracts with DTSC to oversee cleanup to state and federal standards.
- 2) City to pay DTSC costs unlimited but estimated at \$45,000 (\$20,000 advance deposit).
- 3) Terminable at will without further obligation.
- 4) Parties agree to significantly shortened time frame and turn around times to keep LEC project on track.
- 5) Parties reserve all rights/City makes no admissions.

Approval of the LEC is under the California Energy Commission (CEC). CEC has required the LEC site be remediated under contract with the DTSC. As cleanup is mandated and revenues will quickly exceed the expected costs, staff recommends Council authorize the City Manager to enter the Voluntary Cleanup Agreement attached hereto.

FISCAL IMPACT: Up to \$1.6 million in costs in year 1 offset by LEC lease and water revenue.

FUNDING AVAILABLE: Costs to be advanced by LEC as a credit against year 1 and 2 revenues.


Stephen Schwabauer
City Attorney

APPROVED:


Blair King, City Manager



Linda S. Adams
Secretary for
Environmental Protection



Department of Toxic Substances Control

Maziar Movassaghi
Acting Director
8800 Cal Center Drive
Sacramento, California 95826-3200



Arnold Schwarzenegger
Governor

May 28, 2009

Mr. D. Stephen Schwabauer
City Attorney
221 West Pine Street
Lodi, California 95241-1910

VOLUNTARY CLEANUP AGREEMENT, LODI ENERGY CENTER, CITY OF LODI,
SAN JOAQUIN COUNTY, CALIFORNIA

Dear Mr. Schwabauer:

The Department of Toxic Substances Control (DTSC) has enclosed for your review a copy of the Draft Voluntary Cleanup Agreement (Agreement) for the Lodi Energy Center (Site) located at 12745 North Thornton Road in Lodi, San Joaquin County, California 95240. If you find the enclosed Agreement acceptable, please sign and return the document to DTSC. Upon receipt of the signed copy of the document, DTSC will then sign and send you a copy of the fully executed Agreement.

We look forward to working with you toward the successful completion of this project. If you have any questions, please contact Ms. Maria Gillette, Project Manager at (916) 255-3953.

Sincerely,

Tim Miles

for

Steven R. Becker, P.G.
Supervising Senior Engineering Geologist
Brownfields and Environmental Restoration Program

Enclosure

cc: Ms. Ellie Townsend – Hough
Chemical Engineer
California Energy Commission
1516 Ninth Street MS 40
Sacramento, California 95814

Mr. D. Stephen Schwabauer

May 28, 2009

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cc: Ms. Maria N. Gillette (**sent via email**)
Project Manager
Brownfields and Environmental Restoration Program
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95286

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

IN THE MATTER OF:

Lodi Energy Center
12745 North Thornton Road
Lodi, California 95240

PROJECT PROPONENT:

City of Lodi
221 West Pine Street
Lodi, California 95241-6701

Docket No.: HSA-VCA 08109-162

Voluntary Cleanup
Agreement

Health and Safety Code
Section 25355.5(a)(1)(C)

I. INTRODUCTION

1.1 Parties. The California Environmental Protection Agency, Department of Toxic Substances Control (DTSC) enters into this Voluntary Cleanup Agreement (Agreement) with the City of Lodi (the Proponent).

1.2 Site. The Lodi Energy Center property which is the subject of this Agreement (Site) is located at 12745 North Thornton Road, Lodi; San Joaquin County, California 95240. The Northern California Power Agency is proposing to construct a gas-fired generating station identified as the Lodi Energy Center (LEC) on the Site property and has submitted an Application of Certification to the California Energy Commission for approval of the proposed project. The Site property consists of an approximately 4.4 acre parcel that is located within the boundaries of the City of Lodi's existing White Slough Water Pollution Control Facility (WPCF) and described as a portion of the San Joaquin County Assessor's Parcel Number (APN) 055-139-16. A diagram of the Site and a location map are attached as Exhibit A and Exhibit B.

1.3 Jurisdiction. This Agreement is entered into by DTSC and Proponent pursuant to Health and Safety Code (H&SC) section 25355.5(a)(1)(C). This section authorizes DTSC to enter into an enforceable agreement with Proponent to oversee the characterization and cleanup of a Site.

1.4 Purpose. The purpose of this Agreement is for the Proponent to prepare a Preliminary Endangerment Assessment (PEA) (or other assessment deemed by DTSC to be substantially equivalent) to determine the extent of the Site property's existing hazardous substance contamination and conduct a removal action under the oversight of DTSC. DTSC will be working cooperatively with the California Energy Commission to ensure timely coordination of document review and field activities. The purpose of this

Agreement *is* also for DTSC to obtain reimbursement from the Proponent for DTSC's oversight costs.

II. BACKGROUND

2.1 Ownership. The Site property is owned by the City of Lodi, 221 West Pine Street, Lodi, California 95241-1910.

2.2 Substances Found at the Site. Information contained in the Agreement application, the Phase I Environmental Site Assessment (Phase I ESA), dated June 30, 2008, and the Phase II ESA, dated February 26, 2009, report the presence of elevated concentrations of metals, total petroleum hydrocarbons, polynuclear aromatic hydrocarbons and organochlorine pesticides in the Site's surface soils.

2.3 Physical Description. The Site is located in proximity to Interstate Highway 5, approximately 6 miles west of the Lodi city center and 2 miles north of the City of Stockton. The Site is bordered by the City of Lodi's White Slough Water Pollution Control Facility (WPCF) to the north and east, the San Joaquin County's Vector Control fish-rearing ponds on the south, and the Northern California Power Agency's (NCPA) turbine facility and switching yard on the west. Properties beyond the adjoining uses are developed with agricultural fields, and Interstate Highway 5 adjoins the WPCF on the east.

2.4 Site History. Historical aerial photos suggest that the subject property was used for agricultural purposes (row crops and pasture land) prior to the construction of the WPCF in the early 1960's. In recent years, the Site property has been used as a staging area for contractor construction improvements at the adjacent WPCF. Historical documentation indicates the Site property was also used in the late 1980's for the stockpiling of bio-solids/sludge removed from storage ponds at the adjacent WPCF. In 2003, the Site was reportedly used again for the temporary stockpiling of pond sediment during maintenance work at the WPCF. The Phase II ESA reported that these materials have been removed and that the Site property is currently vacant.

III. AGREEMENT

3.0 IT IS HEREBY AGREED THAT DTSC will provide review and oversight of the response activities conducted by the Proponent in accordance with the Scope of Work contained in Exhibit C. The Proponent shall conduct the activities in the manner specified herein and in accordance with the schedule specified in Exhibit E. All work shall be performed consistent with H&SC section 25300 et seq., as amended; the National Contingency Plan (40 Code of Federal Regulations (CFR) Part 300), as amended; U.S. EPA and DTSC Superfund guidance documents regarding site investigation and remediation.

3.1 Scope of Work and DTSC Oversight. DTSC shall review and provide Proponent with written comments on all Proponent deliverables as described in Exhibit C (Scope of Work) and other documents applicable to the scope of the project. DTSC shall provide oversight of field activities, including sampling, as appropriate. DTSC's

completion of activities described above shall constitute DTSC's complete performance under this Agreement.

3.2 Additional Activities. Additional activities may be conducted and DTSC oversight provided by amendment to this Agreement or Exhibits hereto in accordance with Paragraph 3.17. If DTSC expects additional oversight costs to be incurred related to these additional activities, it will provide an estimate of the additional oversight cost to the Proponent.

3.3 Agreement Managers. Steven R. Becker, P.G., Supervising Senior Engineering Geologist is designated by DTSC as its Manager for this Agreement. D. Stephen Schwabauer, City Attorney for the City of Lodi, is designated by the Proponent as the Manager for this Agreement. Each Party to this Agreement shall provide at least ten (10) days advance written notice to the other of any change in its designated manager.

3.4 Notices and Submittals. All notices, documents and communications required to be given under this Agreement, unless otherwise specified herein, shall be sent to the respective parties at the following addresses:

3.4.1 To DTSC: (SEE FOLLOWING PAGE)

Steven R. Becker, P.G.
Supervising Senior Engineering Geologist
Brownfields and Environmental Restoration Program
Attn: Maria N. Gillette
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826

3.4.2 To the Proponent:
D. Stephen Schwabauer
City Attorney
221 West Pine Street
Lodi, California 95241-1910

3.4.3 To the Proponents Consultant:
Sarah Madams
CH2MHILL
2485 Natomas Park Drive, Suite 600
Sacramento, California 95833

All plans and reports shall include a PDF copy in accordance with DTSC's Guidelines for Submitting PDF Documents contained in Exhibit F.

3.5 DTSC Review and Approval. If DTSC determines that any report, plan, schedule or other document submitted for approval pursuant to this Agreement fails to comply with this Agreement or fails to protect public health or safety or the environment, DTSC may (a) Return comments to the Proponent with recommended changes; or

REVISED
7-23-09

3.4 Notices and Submittals. All notices, documents and communications required to be given under this Agreement, unless otherwise specified herein, shall be sent to the respective parties at the following addresses:

- 3.4.1 To DTSC:
Steven R. Becker, P.G.
Supervising Senior Engineering Geologist
Brownfields and Environmental Restoration Program
Attn: Maria N. Gillette
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826
- 3.4.2 To the Proponent:
D. Stephen Schwabauer
City Attorney
City of Lodi
221 West Pine Street
Lodi, California 95241-1910
- 3.4.3 Charlie Swmley
Water Services Manager
City of Lodi
P.O. Box 3006
Lodi, California 95241
- 3.4.3 To the Proponent's Consultant:
Gary D. Haeck, Ph.D., P.G.
Stantec Consulting Corporation
3017 Kilgore Road, Suite 100
Rancho Cordova, California 95670-6150
- 3.4.4 To the Proponent's Tenant:
Ed Warner
Northern California Power Agency
12751 North Thornton Road
Lodi, California 95242

REVISED
7-23-09

(b) Following consultation with the Proponent, modify the document as deemed necessary and approve the document as modified.

3.6 Communications. All DTSC approvals and decisions made regarding submittals and notifications will be communicated to the Proponent in writing by DTSC's Agreement Manager or his/her designee. No informal advice, guidance, suggestions or comments by DTSC regarding reports, plans, specifications, schedules or any other writings by the Proponent shall be construed to relieve the Proponent of the obligation to obtain such written approvals.

3.7 Endangerment During Implementation. In the event DTSC determines that any activity (whether or not pursued in compliance with this Agreement) may pose an imminent or substantial endangerment to the health and safety of people on the Site or in the surrounding area or to the environment, DTSC may order the Proponent to stop further implementation of this Agreement for such period of time as may be needed to abate the endangerment.

3.8 Pavment. The Proponent agrees to pay (1) all costs incurred by DTSC in association with preparation of this Agreement and for review of documents submitted prior to the effective date of the Agreement, and (2) all costs incurred by DTSC in providing oversight pursuant to this Agreement, including review of the documents described in Exhibit C and associated documents, and in providing oversight of field activities. An estimate of DTSC's oversight costs is attached as Exhibit D. It is understood by the parties that Exhibit D is an estimate and cannot be relied upon as the final cost figure. DTSC will bill the Proponent quarterly. Proponent agrees to make payment within 60 days of receipt of DTSC's billing. Such billings will reflect any amounts that have been advanced to DTSC by the Proponent.

3.8.1 In anticipation of services to be rendered, the Proponent shall make an advance payment of \$20,000.00 to DTSC. That payment shall be made no later than ten (10) days after this Agreement is fully executed. If the Proponent's advance payment does not cover all costs payable to DTSC under this paragraph, Proponent agrees to pay the additional costs within sixty (60) days of receipt of a bill from DTSC.

3.8.2 If any bill is not paid by the Proponent within sixty (60) days after it is sent by DTSC, the Proponent may be deemed to be in material default of this Agreement.

3.8.3 All payments made by the Proponent pursuant to this Agreement shall be by a cashier's or certified check made payable to the "Department of Toxic Substances Control", and bearing on its face the project code for the Site (102011-11) and the docket number of this Agreement. Payments shall be sent to:

Department of Toxic Substances Control
Accounting/Cashier
1001 "I" Street
P.O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent concurrently to DTSC's Agreement Manager/Performance Manager.

3.8.4 If the advance payment exceeds DTSC's actual oversight costs, DTSC will provide an accounting for expenses and refund the difference within 120 days after termination of this Agreement in accordance with Paragraph 3.18. In no other case shall the Proponent be entitled to a refund from DTSC or to assert a claim against DTSC for any amount paid or expended under this Agreement.

3.9 Condition Precedent. It is expressly understood and agreed that DTSC's receipt of the advance payment described in Paragraph 3.8.1. is a condition precedent to DTSC's obligation to provide oversight, review and/or comment on documents.

3.10 Record Retention. DTSC shall retain all cost records associated with the work performed under this Agreement for such time periods as may be required by applicable state law. The Proponent may request to inspect all documents which support DTSC's cost determination in accordance with the Public Records Act, Government Code section 6250 et seq.

3.11 Project Coordinator. The work performed pursuant to this Agreement shall be under the direction and supervision of a qualified project coordinator, with expertise in hazardous substance site cleanup. The Proponent shall submit: a) the name and address of the project coordinator; and b) in order to demonstrate expertise in hazardous substance site cleanup, the resume of the coordinator. The Proponent shall promptly notify DTSC of any change in the identity of the Project Coordinator. All engineering and geological work shall be conducted in conformance with applicable state law, including but not limited to, Business and Professions Code sections 6735 and 7835.

3.12 Access. Proponent shall provide, and/or obtain access to the Site and offsite areas to which access is necessary to implement this Agreement. Such access shall be provided to DTSC's employees, contractors, and consultants at all reasonable times. Nothing in this paragraph is intended or shall be construed to limit in any way the right of entry or inspection that DTSC or any other agency may otherwise have by operation of any law. DTSC and its authorized representatives shall have the authority to enter and move freely about all property at the Site at all reasonable times for purposes including, but not limited to: inspecting records, operating logs, sampling and analytic data, and contracts relating to this Site; reviewing the progress of the Proponent in carrying out the terms of this Agreement; conducting such tests as DTSC may deem necessary; and verifying the data submitted to DTSC by the Proponent.

3.13 Sampling, Data and Document Availability. When requested by DTSC, the Proponent shall make available to DTSC, and shall provide copies of, all data and information concerning contamination at the Site, including technical records and contractual documents, sampling and monitoring information and photographs and maps, whether or not such data and information was developed pursuant to this Agreement.

3.14 Notification of Field Activities. The Proponent shall inform DTSC at least seven (7) days in advance of all field activities pursuant to this Agreement and shall allow DTSC and its authorized representatives to take duplicates of any samples collected by the Proponent pursuant to this Agreement.

3.15 Notification of Environmental Condition. The Proponent shall notify DTSC's Agreement Manager immediately upon learning of any condition posing an immediate threat to public health or safety or the environment. Within seven (7) days of the onset of such a condition, the Proponent shall furnish a report to DTSC, signed by the Proponent's Agreement Manager, setting forth the events which occurred and the measures taken in the response thereto.

3.16 Preservation of Documentation. The Proponent shall maintain a central repository of the data, reports, and other documents prepared pursuant to this Agreement. All such data, reports and other documents shall be preserved by the Proponent for a minimum of six (6) years after the conclusion of all activities carried out under this Agreement. If DTSC requests that some or all of these documents be preserved for a longer period of time, the Proponent shall either comply with that request, deliver the documents to DTSC, or permit DTSC to copy the documents prior to destruction. The Proponent shall notify DTSC in writing at least ninety (90) days prior to the expiration of the six-year minimum retention period before destroying any documents prepared pursuant to this Agreement. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the six year period, the related records shall be retained until the completion and resolution of all issues arising there from or until the end of the six-year period, whichever is later.

3.17 Amendments. This Agreement may be amended or modified solely upon written consent of all parties. Such amendments or modifications may be proposed by any party and shall be effective the third business day following the day the last party signing the amendment or modification sends its notification of signing to the other party. The parties may agree to a different effective date.

3.18 Termination for Convenience. Except as otherwise provided in this Paragraph, each party to this Agreement reserves the right unilaterally to terminate this Agreement for any reason. Termination may be accomplished by giving a thirty (30) day advance written notice of the election to terminate this Agreement to the other Party. In the event that this Agreement is terminated under this Paragraph, the Proponent shall be responsible for DTSC costs through the effective date of termination.

3.19 Exhibits. All exhibits attached to this Agreement are incorporated herein by this reference.

3.20 Time Periods. Unless otherwise specified, time periods begin from the date this Agreement is fully executed, and "days" means calendar days. "Business days" means all calendar days that are not weekends or official State holidays.

3.21 Proponent Liabilities. Nothing in this Agreement shall constitute or be considered a satisfaction or release from liability for any condition or claim arising as a

result of Proponent's past, current, or future operations. Nothing in this Agreement is intended or shall be construed to limit the rights of any of the parties with respect to claims arising out of or relating to the deposit or disposal at any other location of substances removed from the-Site.

3.22 Government Liabilities. The State of California (State) shall not be liable for any injuries or damages to persons or property resulting from acts or omissions by the Proponent or by related parties in carrying out activities pursuant to this Agreement, nor shall the State of California be held as a party to any contract entered into by the Proponent or its agents in carrying out the activities pursuant to this Agreement.

3.23 Third Party Actions. In the event that the Proponent is a party to any suit or claim for damages or contribution relating to the Site to which DTSC is not a party, the Proponent shall notify DTSC in writing within ten (10) days after service of the complaint in the third-party action. Proponent shall pay all costs incurred by DTSC relating to such third-party actions, including but not limited to, responding to subpoenas.

3.24 Reservation of Rights. DTSC and the Proponent reserve the following rights.

3.24.1 DTSC reserves its right to pursue cost recovery under the Comprehensive Environmental Response, Compensation and Liability act of 1980 (CERCLA), as amended, the California Health and Safety Code section 25360, and any other applicable section of the law.

3.24.2 Nothing in this Agreement is intended or shall be construed to limit or preclude DTSC from taking any action authorized by law or equity to protect public health and safety or the environment and recovering the costs thereof.

3.24.3 Nothing in this Agreement shall constitute or be construed as a waiver of the Proponent's rights, (including any covenant not to sue or release) with respect to any claim, cause of action, or demand in law or equity that the Proponent may have against any "person", as defined in Section 101(21) of CERCLA, or Health and Safety Code section 25319, that is not a signatory to this Agreement.

3.24.4 By entering into this Agreement, Proponent does not admit to any fact, fault or liability under any statute or regulation.

3.25 Compliance with Applicable Laws. Nothing in this Agreement shall relieve the Proponent from complying with all applicable laws and regulations, and the Proponent shall conform all actions required by this Agreement with all applicable federal, state and local laws and regulations.

3.26 California Law. This Agreement shall be governed, performed and interpreted under the laws of the State of California.

3.27 Severability. If any portion of this Agreement is ultimately determined not to be enforceable, that portion will be severed from the Agreement and the severability shall not affect the enforceability of the remaining terms of the Agreement.

3.28 Parties Bound. This Agreement applies to and is binding, jointly and severally, upon each signatory and its officers, directors, agents, receivers, trustees, heirs, executors, administrators, successors, and assigns, and upon any successor agency of the State of California that may have responsibility for and jurisdiction over the subject matter of this Agreement. No change in the ownership or corporate or business status of any signatory, or of the facility or Site shall alter any signatory's responsibilities under this Agreement.

3.29 Effective Date. The effective date of this Agreement is the date when this Agreement is fully executed.

3.30 Representative Authority. Each undersigned representative of the parties to this Agreement certifies that she or he is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind the parties to this Agreement.

3.31 Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

Date _____
Steven R. Becker, P.G.
Supervising Senior Engineering Geologist
Brownfields and Environmental Restoration Program
Department of Toxic Substances Control

Date _____
D. Stephen Schwabauer
City Attorney
City of Lodi

EXHIBITS
LODI ENERGY CENTER

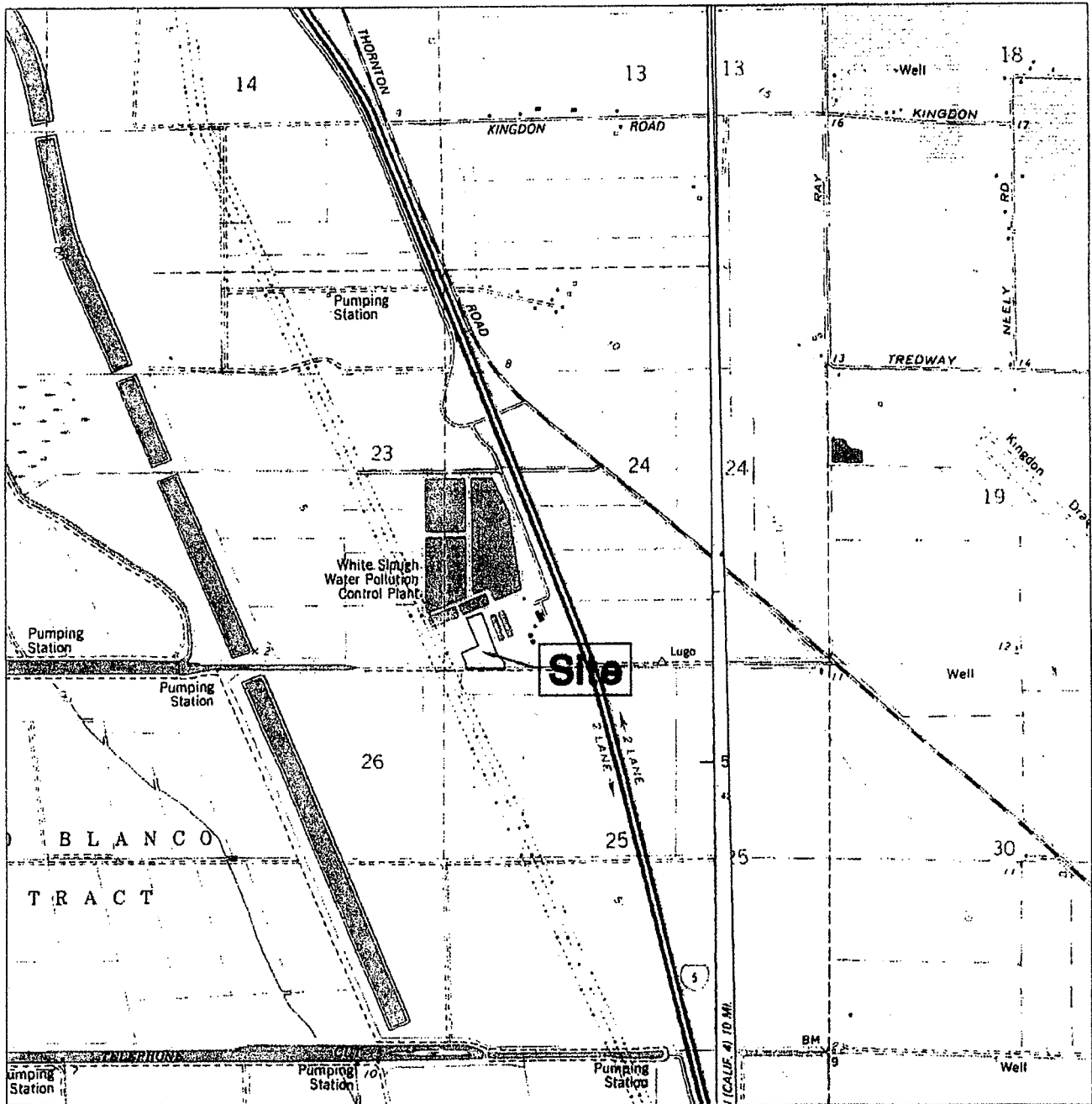
- A - SITE DIAGRAM
- B - SITE LOCATION MAP
- C - SCOPE OF WORK
- D - COST ESTIMATE
- E - SCHEDULE
- F - SUBMITTING PDF DOCUMENTS

EXHIBIT A
SITE DIAGRAM
LODI ENERGY CENTER



FIGURE 2 1
PROPOSED LAYDOWN
AND PARKING AREAS
LODI ENERGY CENTER
LODI, CALIFORNIA

EXHIBIT B
SITE LOCATION **MAP**
LODI ENERGY CENTER



Terminus and Lodi South, CA U.S.G.S Topographic
 Quadrangles
 T3N, R5E, Sec. 23
 1:24,000

Project 6300-01-08

June 2008



Carlton Engineering, Inc.

3883 Ponderosa Road
 Shingle Springs, California 95682

Environmental Site Assessment
 12751 North Thornton Road, Lodi
 San Joaquin, California

FIGURE

1

EXHIBIT C
SCOPE OF WORK
LODI ENERGY CENTER

The following Tasks will be completed as part of this Agreement:

TASK 1. Preliminary Endangerment Assessment (PEA). The Proponent shall conduct a PEA to determine whether a release or threatened release of hazardous substances exists at the Site which poses a threat to human health of the environment. The PEA shall be conducted in accordance with the DTSC guidance manual for evaluating hazardous substance release sites, titled: "Preliminary Endangerment Assessment Guidance Manual", State of California, Environmental Protection Agency, Department of Toxic Substances Control (January 1994). Documents which may be required as part of the PEA are:

- (a) PEA Workplan. This workplan shall include a sampling plan designed to determine the type and general extent of contamination at the Site; a health and safety plan addressing health and safety issues and safe work practices; and a quality assurance/quality control (QA/QC) plan to produce data of known quality.
- (b) PEA Report. This report will document whether a release has occurred or threatened release exists, the threat the Site poses to human health and the environment, and whether further action is necessary.

TASK 2. Removal Action Workplan (RAW). In the event DTSC determines that a removal action is appropriate, the Proponent will prepare a RAW in accordance with Health and Safety Code sections 25323.1 and 25356.1. The Draft RAW shall address the following criteria:

- (a) a description of the onsite contamination;
- (b) the goals to be achieved by the removal action;
- (c) an analysis of the alternative options considered and rejected, and the basis for that rejection. This analysis should include a discussion for each alternative which covers its effectiveness, implementability and cost;
- (d) administrative record list; and
- (e) a statement that the RAW serves as an equivalent document to the Engineering Evaluation/Cost Analysis document required by the National Contingency Plan
- (f) Remedial Design and Implementation Plan consisting of:
 - 1. technical and operational plans and engineering designs for implementation of the approved remedial or removal action alternative(s);
 - 2. a schedule for implementing the construction phase;
 - 3. a description of the construction equipment to be employed;

4. a Site specific hazardous waste transportation plan (if necessary);
5. the identity of any contractors, transporters and other persons conducting the removal and remedial activities for the Site;
6. post-remedial sampling and monitoring procedures (as applicable) for air, soil, surface water and groundwater;
7. operation and maintenance procedures and schedules; and
8. a health and safety plan.

TASK 3. California Environmental Quality Act. Based on the results of the proposed project's initial environmental assessment, DTSC will prepare the necessary CEQA documents. If required, the Proponent will submit the information necessary for DTSC to prepare these documents.

TASK 4. Implementation of Final RAW. Upon DTSC's approval of the final RAW, the Proponent shall implement the removal action, as approved. Within, thirty (30) days of completion of field activities, the Proponent shall submit an Implementation Report documenting the implementation of the final RAW.

TASK 5. Changes During Implementation of Final RAW. During implementation of the final RAW and Remedial Design and Implementation Plan (RDIP), DTSC may specify such additions, modifications and revisions to the RAW or RDIP as deemed necessary to protect human health and safety, or the environment to implement the RAW.

TASK 6. Public Participation.

6.1 Proponent shall conduct appropriate public participation activities given the nature of the community surrounding the Site and the level of community interest. Proponent shall work cooperatively with DTSC to ensure that the affected and interested public and community are involved in DTSC's decision-making process. Any such public participation activities shall be conducted in accordance with Health and Safety Code sections 25358.7, the DTSC Public Participation Policy and Procedures Manual, and with DTSC's review and approval.

6.2 The Proponent shall prepare a community profile to examine the level of the community's knowledge of the Site; the types of community concerns; the proximity of the Site to homes and/or schools, day care facilities, churches, etc.; the current and proposed use of the Site; media interest; and involvement of community groups and elected officials.

6.3 The Proponent shall develop and submit fact sheets to DTSC for review and approval when specifically requested by DTSC. Proponent shall **be** responsible for printing and distribution of fact sheets upon DTSC approval using the approved community mailing list.

6.4 The Proponent shall publish, in a major local newspaper(s), a public notice announcing the availability of the RAW for public review and comment. The public comment period shall last a minimum of thirty (30) days.

6.5 DTSC may require that the Proponent hold at least one public meeting to inform the interested community of the proposed activities and to receive public comments on the RAW.

6.6 Within two weeks of the close of the public comment period, the Proponent shall coordinate with DTSC the preparation of written response to the public comments received.

6.7 If appropriate, the Proponent will revise the RAW on the basis of comments received from the public, and submit the revised RAW to DTSC for review and approval. The Proponent will also notify the public of any significant changes from the actions proposed in the RAW.

TASK 7. Quality Assurance/Quality Control (QNQC) Plan. All sampling and analysis conducted by the Proponent under this Agreement shall be performed in accordance with a QNQC Plan submitted by the Proponent and approved by DTSC. The QNQC Plan will describe:

- (a) the procedures for the collection, identification, preservation and transport of samples;
- (b) the calibration and maintenance of instruments;
- (c) the processing, verification, storage and reporting of data, including chain of custody procedures and identification of qualified person(s) conducting the sampling and of a laboratory certified or approved by DTSC pursuant to Health and Safety Code section 25198; and
- (d) how the data obtained pursuant to this Agreement will be managed and preserved in accordance with the Preservation of Documentation section of this Agreement.

TASK 8. Health and Safety Plan. The Proponent will submit a Site Health and Safety Plan in accordance with California Code of Regulations, Title 8, section 5192 and DTSC guidance, which covers all measures, including contingency plans, which will be taken during field activities to protect the health and safety of the workers at the Site and the general public from exposure to hazardous waste, substances or materials. The Health and Safety Plan should describe the specific personnel, procedures and equipment to be utilized.

TASK 9. Deed Restrictions. The Parties agree that deed restrictions or land use restrictions may be necessary to insure full protection of the environment and human health. DTSC may require such a deed restriction or land use restriction as part of the RAW approval. The Proponent agrees to sign and record the deed or land use restrictions approved by DTSC.

TASK 10. Operation and Maintenance (O&M) Agreement. The Proponent shall comply with all operation and maintenance requirements in accordance with the final RAW. The Proponent shall enter into an O&M Agreement (which includes financial assurance requirements) with DTSC prior to certification of the Site.

DEPARTMENT OF TOXIC SUBSTANCES CONTROL
EXHIBIT D
VCA COST ESTIMATE *includes Direct and Indirect Rates*
LODI ENERGY CENTER

| TITLE | Project Manager | Legal Staff Counsel | Toxicology Staff Toxicologist | Geology EG | HQ CEQA AEP | Industrial Hygiene AIH | Public Participation PPS | Supervisor SHSE/SHSS | Eng/Geo SEG | Clerical WPT |
|----------------------------------|-----------------|---------------------|-------------------------------|------------|-------------|------------------------|--------------------------|----------------------|-------------|--------------|
| CLASSIFICATION | HSS | Counsel | Toxicologist | EG | AEP | AIH | PPS | SHSE/SHSS | SEG | WPT |
| TASKS | | | | | | | | | | |
| VCA (PEA/RAW) | | | | | | | | | | |
| Preparation/Negotiation | 8 | | | | | | | 2 | | 1 |
| Site Visit | 8 | | | | | | | | | |
| PEA | 24 | | | | | | | 1 | | |
| Project Meetings | 8 | | | | | | | 1 | | |
| Final Correspondence | 8 | | | | | | | 1 | | 1 |
| Risk Assessment | 8 | | 20 | | | | | | | |
| CEQA | 20 | | | | 12 | | | | | 1 |
| RAW | 30 | | | | | 8 | | 1 | | |
| Public Participation | 16 | | | | | | 25 | | | 2 |
| Remedial Design | 4 | | | | | | | 2 | 8 | |
| Implementation Oversight | 8 | | | | | 8 | | | | |
| Completion/Implementation Report | 16 | | | | | | | 1 | | 2 |
| Deed Restriction | 20 | 16 | | | | | | 1 | | 1 |
| O&M Agreement | 20 | 16 | | | | | | 1 | | 1 |
| Certification | 6 | | | | | | | 1 | | 1 |
| O&M Plan | 8 | | | | | | | | | |
| Total Hours/Class | 212 | 32 | 20 | 0 | 12 | 20 | 25 | 12 | 8 | 10 |
| Total Hours | 351 | | | | | | | | | |
| Hourly Rate/Class | \$118 | \$162 | \$160 | \$145 | \$116 | \$136 | \$110 | \$203 | \$158 | \$61 |
| Total Cost/Class | \$25,016 | \$5,184 | \$3,200 | \$0 | \$1,392 | \$2,720 | \$2,750 | \$2,436 | \$1,264 | \$610 |

| | |
|-----------------------|----------|
| Total Estimated Costs | \$44,572 |
| Past Costs | |
| Grand Total Costs | \$44,572 |

* Indirect rate used for calcu 164.84%

DRAFT
EXHIBIT E
ESTIMATED SCHEDULE
LODI ENERGY CENTER

| TASK | SCHEDULE |
|---|--|
| Scoping Meeting between DTSC and Proponent | Early August 2009 |
| Proponent submits Draft PEA Workplan | August 14, 2009 |
| DTSC Provides Comments on Draft PEA Workplan | September 11, 2009 (within 30-days of receipt of PEA Workplan) |
| Proponent submits Draft PEA Document | October 30, 2009 (within 51-days of receipt of DTSC's comments) |
| DTSC Provides Comments or Approval on Draft PEA Document) | November 27, 2009 (within 30-days of receipt of Draft PEA Document) |
| Proponent submits Draft RAW Document | December 11, 2009 (15 days) |
| DTSC provides Comments or Approval of the Draft RAW | 1/08/2010 (30 days) |
| Proponent Submits Final Draft RAW (if necessary) to address DTSC's Comments | 1/29/2009 (15 days) |
| DTSC approves Final Draft RAW and initiates 30-day public comment period for Draft RAW and CEQA documentation | Within 45 days of receipt of Final Draft RAW |
| DTSC responds to public comments (if any) and approves the Final RAW | Within 15 days of close of public comment period |
| Proponent submits Implementation Report | Within 30 days of completing field work |
| DTSC reviews/approves Implementation Report | Within 30 days of receiving Implementation Report |
| Proponent reviews Draft Land Use Covenant and Operation & Maintenance (O&M) Agreement | Within 45 days of receiving Draft Land Use Covenant and O&M Agreement |
| DTSC certifies Site | Following DTSC approval of the RAW Implementation Report, recording of the Land Use Covenant, signature of the O&M Agreement and preparation of the O&M Plan (as required) |

EXHIBIT F
SUBMITTING PDF DOCUMENTS
LODI ENERGY CENTER

With the introduction of the Site Mitigation and Brownfields Reuse Program's (SMBRP's) database, EnviroStor, the public can now download and view project related documents online. To provide the public with this vital source of information, please provide a PDF copy of reports, even if a hard copy **will** be supplied.

Due to differences in internet downloading capabilities and resolutions of PDF files, many users have trouble downloading and viewing large PDF files. The following guidelines were created to provide consistency in PDF files and allow most users to access these files.

- 1) File size:** For each file that needs to be uploaded, the maximum file size should be kept to **8 megabytes** (MB). If you have a large file, please save large color images (e.g., figures, site photos, maps) and supplemental information (appendices) in separate PDF files. If using a scanner, the scanner resolution should be no more than 200 dpi.
- 2) Saving and Naming PDF files:** If you make any changes to a PDF file, always use the **Save As** option instead of the **Save** option when saving. This will produce a smaller file size. It is recommended that the files be named by using an abbreviated site name, report title, date, and, if multiple files are being uploaded, the section of report (e.g., **Site-report-section-mmddyy**, 968-81stAve_PEA_text_072706, etc).
- 3) Bookmarks:** For large reports, bookmarks should be created in the PDF for ease of navigation. For help on creating bookmarks, please refer to Adobe Acrobat Help.
- 4) FTP server:** To submit large files or a group of files that cannot be sent via e-mail, they can be sent to a DTSC staff member via the FTP server. Below are the instructions to submit files via the FTP server:

I [http://www. DTSC FTP Requests/index cfm](http://www.dts.ca.gov/ftp/requests/index.cfm)

i. Provide Upload File Information Please provide information about yourself, the recipient, and the name of the computer file to be uploaded. This tells our system:

- a. to expect and allow your file onto the FTP server,
- b. to whom the recipient is, and
- c. to let the recipient know who sent the file

ii. Transfer the File: Once your information is provided in the first step, you have 60 minutes to send your file to our server. You will be provided with an FTP location after providing the information. You will be notified upon the successful receipt or failure to receive your file.

For further assistance about submitting PDF files, please contact the appropriate Brownfields and Environmental Restoration Program Project Manager, or the EnviroStor Help Desk at (916) 323-3400, or by email to EnviroStor@dtsc.ca.gov.